In homicide, under the doctrine of "implied" or "constructive" malice, so-called, "constructive intent" or "transposed intent" is held to be sufficient. *State v. Smith* (1847, S. C.) 2 Strob. 77; see Clark, *Crim. Law* 53. Thus if A intends to kill X but the bullet strikes and kills Y, it is said that there is "constructive intent" to kill Y. *State v. Pollard* (1897) 139 Mo. 220, 40 S. W. 949; see 63 L. R. A. 660. This is but a fictitious way of stating the rule that A may be guilty of the murder of Y, although he have no intent to kill or even to injure Y. See 33 L. R. A. (N. S.) 1070. But when a statutory or a common law crime has as one of its essential elements an actual or specific intent to injure the person attacked, it is obvious that the doctrine of "constructive" or "transposed" intent is not applicable. See *Carter v. State* (1890) 28 Tex. App. 355, 13 S. W. 147. If A assaults B in the belief that he is C, it may well be questioned whether it is strictly true that A "intended" to attack B. He certainly intended to attack C. Has he, then, more than one intent? See the discussion in Professor Cook's article, *Act, Intention and Motive* (1917) 26 YALE LAW JOURNAL 645. In the principal case the court construes the Illinois statute as requiring a specific intent to injure the person assaulted. If this is the true construction, the conclusion of the court necessarily follows. But it may well be doubted whether if the indictment had alleged an "intent" to injure the person assaulted, the court would not have held the charge proved by evidence that the attack had been made under a misapprehension as to the identity of the person assaulted. See *McGeehee v. State* (1885) 62 Miss. 772; *Walker v. State* (1856) 8 Ind. 290. See also 7 L. R. A. (N. S.) 630 and 37 *ibid.* 172.

EVIDENCE—INTERPRETATION—DEVISE BY MISTAKEN DESCRIPTION.—The testator's will contained a provision devising to his daughter M "the north 25 acres of the northeast quarter of section 17." He did not own any part of the northeast quarter but he did own the northwest quarter of the section. The devise in question followed a clause giving another daughter the south 15 acres of the northeast quarter of the northwest quarter of section 17. There was no residuary clause. *Held,* that the will was correctly interpreted to vest in M the north 25 acres of the northwest quarter. *Alford v. Bennett* (1917, Ill.) 117 N. E. 89.

The operative, or "ultimate," facts which, as a matter of substantive law, determine the legal effect of a devise fall into two groups, namely, (1) the testator's intentions; and (2) an approximate, though not necessarily a perfect, expression thereof in a properly attested writing. Hence the process of interpretation has two objects of inquiry: (1) What were the testator's actual intentions as shown by such evidence, intrinsic and extrinsic, as may be admissible; and (2) have those intentions been sufficiently expressed in the will? *Cf.* Hawkins, 2 Jurid. Soc. Papers 298. No cases involving interpretation have caused the courts more difficulty than those in which the devise has accurately described land that the testator does not own, but would describe, with the change of a word or figure, land that he does own. In such cases the difficulty is not to ascertain the testator's actual intentions—he clearly intends to devise his own property—but to determine whether the expression of those intentions is a close enough approximation to be given legal effect. If, disregarding the erroneous words or figures, the remaining words of the will approximately, although not perfectly, express the intention to convey the property he owned, the devise should be given effect. *Patch v. White* (1886) 117 U. S. 210, 6 Sup. Ct. 617; *Govin v. Metz* (1894, N. Y. Sup. Ct.) 79 Hun. 461, 29 N. Y. Supp. 988. Illinois, however, adopted the contrary view in *Kurtz v. Hibner* (1870) 55 Ill. 514. This case has been severely criticised [e. g., see Judge Redfield's note in (1871) 10 AM. L. REG. (N. S.) 97 and Judge Caton's reply, *ibid.* 353]; but it has continued to be followed in numerous decisions. See *Lomax v. Lomax* (1905) 218 Ill. 629,

75 N. E. 1076; *Graves v. Rose* (1910) 246 Ill. 76, 92 N. E. 601. Side by side, however, with this line of decisions has been another which, without repudiating the former, recognizes and applies the more liberal doctrine of *Patch v. White.* See *Decker v. Decker* (1887) 121 Ill. 341, 12 N. E. 750; *Gano v. Gano* (1909) 239 Ill. 539, 88 N. E. 146. When the will contains descriptive words indicating possession or ownership, the decisions holding that the intentions are sufficiently expressed are not necessarily in conflict with the *Kurtz* case. *Bowen v. Allen* (1885) 113 Ill. 53; *Lawrence v. Lawrence* (1912) 255 Ill. 365, 99 N. E. 675. But since the lack of such descriptive words may, according to other cases, be supplied by the "presumption" that the testator intended to dispose of property which he owned [as declared in *Collins v. Capps* (1908) 235 Ill. 560, 85 N. E. 934, and the principal case], it would seem that the *Kurtz* case might well be recognized as no longer law. For a collection of authorities outside of Illinois, see 6 L. R. A. (N. S.) 942. It is believed that much of the difficulty and confusion would be avoided if the courts were to recognize that, as indicated at the outset, the primary problems involved in the so-called process of interpretation, or construction, are those of substantive law, not those of the law of evidence.

EVIDENCE—SELF-INCRIMINATION—COMPULSORY TAKING OF FINGER PRINTS.—Under a statute providing "that no person convicted of . . . disorderly conduct . . . shall be sentenced . . . until the finger print records are officially searched," the court ordered that finger prints be taken of the defendant. The defendant objected to the order as a violation of his constitutional privilege against self-incrimination. *Held,* that the taking of finger prints is not a violation of the constitutional privilege. *People v. Sallow* (1917, Gen. Sess.) 165 N. Y. Supp. 915.

There is some doubt as to the origin and original policy of the self-incrimination rule. Professor Wigmore contends that it is not a common law rule at all, but a gradual perversion of a statutory rule, intended to prevent a usurpation of jurisdiction on the part of the Ecclesiastical Courts. See his articles in 5 HARV. L. REV. 71 and 15 *ibid.* 610. With reference to the forcible exhibition of the person, there is a line of cases which have followed the rule blindly. *State v. Height* (1902) 117 Ia. 650, 91 N. W. 935. Carried to its logical conclusion, the rule would forbid a jury to look at a prisoner, against his will, for the purpose of drawing deductions from his appearance, and it has even been so held. *State v. Jacobs* (1858) 50 N. C. 259. The rule has been severely criticized, the modern tendency limiting its application to testimonial utterances, and, by analogy, to documents taken from the defendant, though even here a distinction has been drawn between documents which are the basis of the charge, and those which are merely of an evidentiary character. *State v. Krisinski* (1905) 78 Vt. 162, 62 Atl. 37. *Holt v. United States* (1910) 218 U. S. 245, 252, 31 Sup. Ct. 2, 6. The instant case presents a novel application of the objection against self-incrimination. Similar rulings have been made in somewhat analogous cases. *State v. Ah Chuey* (1879) 14 Nev. 79 (exhibition of defendant's arm); *Garvin v. State* (1876) 52 Miss. 207 (profert of his person); *State v. Graham* (1876) 74 N. C. 646 (comparison of boots with boot-prints). The instant case suggests a distinction between cases in which the defendant was required merely to remain passive and those in which he was required to exercise volition, the latter being regarded as a violation of the constitutional privilege. It is submitted, however, that the distinction is of doubtful validity. Strictly speaking, even so-called passivity involves an exercise of volition. Moreover the application of the court's test would lead to practically the same results as would blind adherence to the original rule. It is believed that the constitutional privilege should be deemed to prohibit compulsory exhibition by the defendant only in cases where such exhibition might tend to create undue prejudice in the jury.